

Waste Management and Radiation Control Board Meeting
Utah Department of Environmental Quality
195 North 1950 West (Conference Room #1015) SLC, Utah
August 15, 2016
1:30 p.m.

Board Members Present: Brett Mickelson (Chair), Dennis Riding (Vice Chair), Richard Codell, Mark Franc, Jeremy Hawk, Shawn Milne, Vern Rogers and Shane Whitney

Board Members Absent: Danielle Endres, Steve McIff and Alan Matheson

Staff Members Present: Scott Anderson, Therron Blatter, Gary Astin, Ralph Bohn, Doug Hansen, Arlene Lovato, Rusty Lundberg, Lisa Mechem, Deborah Ng, Rick Page, Jerry Rogers, Elisa Smith, Don Verbica and Raymond Wixom

Others Present: Linda Ebert and Ashley Soltysiak

I. Call to Order.

Brett Mickelson (Chair) welcomed all in attendance and called the meeting to order at 1:30 p.m. Steve McIff, Danielle Endres and Allan Matheson (Scott Baird acted in his behalf) were excused from the meeting. Brent Everett was also excused (Therron Blatter acted in his behalf).

II. Approval of the Meeting Minutes for the July 14, 2016 Board Meeting (Board Action Item).

It was moved by Shawn Milne and seconded by Mark Franc and UNANIMOUSLY CARRIED to approve the July 14, 2016 Board Meeting minutes.

III. Underground Storage Tanks Update.

Therron Blatter, Underground Storage Tank (UST) Branch Manager with the Division of Environmental Response and Remediation (DERR), informed the Board that the cash balance of the Petroleum Storage Tank (PST) Trust Fund at the end of June 2016 was \$17,376,517.00. The preliminary estimate for the cash balance of the PST Trust Fund for the end of July 2016 is \$17,213,545.00. The DERR is in the process of providing data to Deloitte Consulting for preparation of the 2016 actuarial analysis of the PST Trust Fund. Once the report from Deloitte Consulting is received, an update will be provided to the Board. There were no comments or questions.

IV. Proposed Non-substantive Change to Underground Storage Tank Rule R311-210 (Information Item Only).

Gary Astin, Rules Coordinator for the Underground Storage Tank Program, mentioned that previously, a draft of proposed rule changes for UST rules was presented to the Board. The DERR will bring these rules before the board at the next meeting to proceed with formal rulemaking. There is one additional rule change that is being proposed. This is a non-substantive rule change for R311-210 which deals with administrative proceedings. Until 2011, the DERR had their own rule regarding administrative proceedings. At that time, the Department of Environmental Quality (DEQ) created rules for the entire

department. The DEQ Rule R305-6 has changed to R305-7. The UST Rule R311-210 will be changed to reflect the correct citation. No action is required by the Board. This is an informational item only.

Dennis Riding asked why this change is not being made along with the other rule changes that will go through the formal rule-making process. Mr. Astin replied that the citation to R305-7 is the only change needed for R311-210 and does not need to go through the formal rule-making process because it is non-substantive. There were no additional questions or comments.

V. X-Ray Program.

- A. Approval of Mammography Imaging Medical Physicist (MIMP) in accordance with 19-6-104(2)(b) of the Utah Code Annotated. (Board Action Item)

Lisa Mechem, Environmental Scientist, X-Ray Program informed the Board that an application had been received from Joel Rogers, M.S. for certification as a MIMP.

Individuals referred to as MIMPs are required to submit an application for review of qualifications and must be certified by the Board annually. These physicists perform radiation surveys and evaluate the quality control programs of the facilities in Utah providing mammography examinations. The Board previously approved 14 MMIP applicants in the May 2016 Board meeting.

Subsection 19-3-103.5(2)(f) of the Utah Code Annotated provides authority for the Board to review the qualifications of, and issue certificates of approval to, individuals who survey mammography equipment or oversee quality assurance practices at mammography facilities.

Mr. Rogers meets the requirement and qualifications detailed in R313-28-140 of the Utah Administrative Code. Mr. Rogers resides in Tigard, Oregon, where he obtained his supervised experience. The Director recommends approval of the application.

It was moved by Jeremy Hawk and seconded by Shane Whitney and UNANIMOUSLY CARRIED to approve Joel Rogers, M.S as a Mammography Imaging Medical Physicist (MIMP) in accordance with 19-6-104(2)(b) of the Utah Code Annotated.

VI. Administrative Rules.

- A. Approval to proceed with formal rulemaking and 30-day public comment period for repeal of Rule R313-27, "Medical Use Advisory Committee." (Board Action Item)

Scott Anderson provided information regarding the request to proceed with formal rulemaking and 30-day public comment period for repeal of Rule R313 27, "Medical Use Advisory Committee." This rule was tabled at the July Board meeting until additional information could be obtained.

Mr. Anderson informed the Board that there is no legal basis for the rule and it cannot be implemented or enforced and deferring action on this request does not change the rule's status. The Attorney General's Office (memorandum from Craig Anderson, Assistant Attorney General) has determined that the Radiation Control Board did not have the authority to promulgate R313-27. (A copy of the memorandum was provided in the July 14, 2016 Board packet.) Mr. Anderson further explained that obtaining appropriate public input on proposed rules is already accomplished with the Division's "scoping" process. Scoping is a formal process in which input and comments are requested from all interested and impacted parties prior to any public comment. This process ensures that proposed rules

are thoroughly vetted before being presented to the Board. Many times, changes are made to proposed rules as a result of scoping, which makes for better rulemaking. Mr. Anderson also relies on Board members to represent their constituency in providing input to the Division on proposed rules. Mr. Anderson further stated that it is not necessary to have a duplicative process by creating a committee to get the same input on proposed rules. Scoping provides a faster, better and more efficient process for public review of proposed rules. Mr. Anderson recommended the Board proceed with the formal rulemaking process on the repeal of Rule R313-27.

Vern Rogers thanked Mr. Anderson for his comments and clarification regarding the Division's process on scoping rules and noted that some misunderstanding or lack of information was part of the reason why action was not taken on the proposed rule at the last Board meeting.

It was moved by Shawn Milne and seconded by Richard Codell and UNANIMOUSLY CARRIED to approve to proceed with formal rulemaking and 30-day public comment period for repeal of Rule R313 27, "Medical Use Advisory Committee."

VII. Report to Legislature.

- A. Review of comments on the Evaluation of Closure, Post-Closure and Perpetual Care for Hazardous and Radioactive Waste Treatment and Disposal Facilities, Report to Legislature. (Board Action Item)

Scott Anderson discussed the draft report prepared for the Board by URS Corporation (AECOM) of its evaluation of the adequacy of financial assurance for closure, post-closure care and perpetual care and maintenance for commercial hazardous waste and radioactive waste treatment, storage and disposal facilities. This report is required by statute and must be submitted to the Legislative Management Committee by October 1, 2016. The statute requires a report every five years. Mr. Anderson provided some historical background regarding this matter.

This draft report was initially provided to the Board during the July 14, 2016 Board meeting, with the request for Board members to provide comments on the report. Two board members commented on the draft report. These comments and the Division's response to the comments were provided in the August 15, 2016 Board packet.

This report is essentially the same as the 2006 and 2011 reports that were submitted to the Legislature with one additional recommendation that deals with the rate of return on investment of perpetual care funds. Perpetual care is not required for hazardous waste management facilities; it is only required for radioactive waste management facilities. Mr. Anderson discussed the concern regarding the current rate of return and the assumption that the fund would grow 2% per year to \$93 million dollars over 100 years. The current rate of return is less than 1%. Mr. Anderson recommended the Board approve the report as written.

Vern Rogers summarized his comments on the report. Mr. Rogers submitted over 170 comments and other suggested changes to the report. Mr. Rogers recommended that only the specific areas of evaluation required by the statute be addressed in the report. Other Board members supported the inclusion of the extensive background information included in the report as it provided the appropriate context for the report.

Shane Whitney expressed his opposition to the recommendation in the report that a perpetual care fund be established for hazardous waste management facilities.

Other Board members expressed their opinions on the report. Division staff responded to questions by the Board. Don Verbica noted that approximately 60 changes suggested by Mr. Rogers were acceptable to the Division and the report could be modified to reflect those changes.

It was moved by Shawn Milne and seconded by Vern Rogers that the Board accept only those changes proposed by Vern Rogers with which the Division agreed and incorporate them into the Report as a baseline for the Report. Brett Mickelson, Dennis Riding, Richard Codell, Mark Franc, Jeremy Hawk, Shawn Milne and Vern Rogers voted in favor of the motion. Shane Whitney voted against the motion.

Raymond Wixom, Attorney General's Office, summarized the statutory requirements the Board has regarding the Report to the legislature.

Board members discussed the recommendation regarding the rate of return on investment of perpetual care funds. Scott Baird suggested that other investment options be discussed with the state treasurer. Mr. Baird noted that other funds, such as the state retirement fund, have a higher rate of return.

Board members discussed the recommendation that a perpetual care fund be established for hazardous waste management facilities. Mr. Rogers stated that he is supportive of requiring perpetual care for hazardous waste facilities, as long as the funds do not come from the permittee. Mr. Whitney supported this position. Mr. Anderson noted that a perpetual care fund should be part of the cost of doing business for hazardous waste management facilities. Mr. Anderson did not support any funding scenario that reduces the permittee's current financial assurance obligations or reduces the Division's appropriated budget.

It was moved by Vern Rogers and seconded by Dennis Riding to direct the Division to revise the recommendations in the Report as follows: (1) the Board recommends that the options available to the State Treasurer for investment of the perpetual care funds be expanded similar to those available for the state retirement funds; and (2) that a perpetual care fund be evaluated for hazardous waste facilities and funded by general funds so as to not place a financial burden on the permittees or impact the Division's budget appropriation. The Board also directs the Division as part of this motion to remove references in the Report to land ownership and the 1% rate of return on investment of perpetual care funds. This motion also directs the Division to include in the report a recommendation that the Legislature evaluate any and all assumptions underlying the analysis of the adequacy of financial assurance.

Board members discussed this motion. Scott Anderson expressed concern regarding the directive to the Legislature to evaluate the assumptions in the report and the difficulty in determining which assumptions should be analyzed and how the Legislature would provide such an analysis. Mr. Rogers agreed to amend his motion and remove this directive from the motion. Shawn Milne expressed concern regarding the use of taxpayer monies to fund perpetual care at hazardous waste management facilities. No vote was taken on this motion.

Mr. Rogers' motion was amended by Shawn Milne and seconded by Shane Whitney and UNANIMOUSLY CARRIED to remove the language regarding monies from the general funds for perpetual care. The amended motion was placed before the Board and UNANIMOUSLY CARRIED that the recommendations in the report be revised to read as follows: (1) the Board recommends that the options available to the State Treasurer for investment of the perpetual care funds be expanded similar to those available for the state retirement funds; and (2) that a perpetual care fund be evaluated for hazardous waste facilities but funded in such a way as to not

place a financial burden on the permittees or impact the Division's budget appropriation. The Board also directs the Division as part of this motion to remove references in the Report to land ownership and the 1% rate of return on investment of perpetual care funds.

The Division staff will revise the report as directed by the Board and provide a revised copy to the Board the last week in August. Additional comments from the Board will need to be submitted to the Division by August 29, 2016. Final discussions and action on the revised report will need to take place in the September 8, 2016 Board meeting.

Ashley Soltysiak, Senior Policy Associate for HEAL Utah, expressed concerns with some of the proposed changes. Funding for perpetual care needs to be sufficient to protect the environment and the general public. This funding should come from the waste management facilities, not the taxpayers.

VIII. Other Business.

A. Misc. Information Items. – None to Report.

B. Scheduling of next Board meeting.

The next Board meeting is scheduled for September 8, 2016 at 1:30 p.m. at the Utah Department of Environmental Quality, 195 North 1950 West, SLC, Utah.

IX. Adjourn.

The meeting was adjourned at 4:18 p.m.